

Is it in the interest of justice to extract a confession under torture?

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Abstract

During Kuromiya's annexation by Russia, freelance journalist Esipenko told the court that he would be tortured with electric shocks, beaten, and threatened with death unless he admitted to spying on behalf of Ukraine. (RFE/RL's Crimea. Realities, 2021) This action stimulated public discontent and thinking about the justice system. How can society reform a coercive system and move toward a criminal justice system that is logical, and compassionate? The use of torture to get confessions has also been a subject of ongoing debate within this problem.

Keywords: justice system, utilitarianism, liberal human rights.

1. Introduction

Under the UN Convention, torture is "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining information or a confession from that person or a third person." The police play an essential role in maintaining territorial security and peace in modern societies because of their ability to impose the law with authority and coercion. To prevent state officials from utilizing their coercive power to oppress and subjugate, these coercive powers must be restrained to a certain degree. Pinker (2011) views a shift toward a more enlightened, compassionate, and peaceful order as seen by the end of cruel criminal punishment and the use of torture to compel confessions. In this essay, we will discuss the justice of torture and related externalities through the lenses of both utilitarianism and liberal human rights.

According to utilitarianism, a deed is morally justified if it benefits the majority, and torture can be an effective way to get information that could help society avoid additional harm. This viewpoint is challenged by several factors, including the possibility that torture could result in false information, the ethical ramifications of using pain and suffering to support a decision, and the damaging effects of torture on the global hierarchy of violence.

According to the liberal human rights viewpoint, each person has intrinsic moral and legal rights that cannot be violated, including freedom from torture and other cruel treatment. The fundamental principles of the rule of law are respect for human rights and the outlawing of torture and other inhumane treatment. Torturing people breaches the idea that everyone has intrinsic worth and dignity, regardless of whether they are accused of a crime.

2. Analysis

2.1 The Arguments for Confession Under Torture

2.1.1 Utilitarian

Initially, when we look at this issue through a practical lens, in most cases, it is in favor of severe torture to extract a confession. The idea of utilitarianism was first put forth by Bentham, who claimed that the highest moral standard is to maximize happiness so that overall pleasure outweighs pain. According to Bentham's utilitarianism, every action that enhances worth is justified. Suppose a police chief catches a suspect and has reason to believe that he has planted an explosive device in a busy downtown area. The suspect continues to defy authorities by refusing to identify himself as a terrorist or reveal where the bomb is. Then, by utilitarian calculus, although the suspect suffers greatly and his merit and happiness are diminished by the severe torture to extract a confession, if the bomb explodes, thousands of innocent lives will be lost. The overall mix of utility, including the feelings of victims' family members, greatly outweighs the suspect's suffering, so severe torture should be implemented. This order of magnitude comparison can be a marker to weigh the reasonableness of brutal torture to extract a confession.

2.1.2. Punishment

Furthermore, a viewpoint accepted by the general public is that the suspect is guilty of a serious crime and deserves to be tortured in such a way. Typically, suspects who require the police to use coercion to bring justice to the masses have committed grave and unforgivable crimes, and there are more potential threats as well. Using force on these individuals allows them to experience the pain they deserve and reduces the potential threat through confessions and catching accomplices. For the victim's

family, the pain of using torture to extract a confession from the perpetrator is far less than losing the victim. Still, it provides a degree of comfort to the family, who believes those who inflict severe injuries on others deserve such retribution. In addition, once a confession extracted by torture is reported in the news media, it can, to some extent, deepen the fear of potential perpetrators to conduct a severe crime and thus reduce the overall crime rate. (Kearns, Joseph Young, 2020)

2.1.3 National Security

From the national perspective, the human rights of a suspect or spy are as light as a feather when the nation's safety is at stake, arguing that torture is necessary when it influences national security. A famous supporter of this contention was former U.S. Vice President Richard Cheney, who strongly supported forced confession methods, especially in the context of terrorist attacks. (Irin Carmon, 2014). Almost half of the public responded to this statement positively, as the CIA claims that the information acquired in this manner was valuable. A startling 45% of Americans, according to a CNN poll from the beginning of October 2011, would not object to state torture to obtain information concerning terrorists. Moreover, some reporters argue that torture in special times does not mean the country is in a moral hazard. Jay Winik, a columnist for the Wall Street Journal, commented that in extraordinary times, citizens should loosen their grip on civil liberties and protections and worry about restoring them later. When the country is safe again, moral principles, such as human rights, will be restored. (Alisa Solomon, 2001)

2.2 The Argument against Confession Under Torture

2.2.1 False Information

The primary interest of justice is to find the truth and ensure that those responsible for criminal acts are punished accordingly. Extracting a confession from a suspect through torture may provide a quick means to attain this goal, but it is hardly a reliable and ethical method. As neuroscientist Shane O'Mara writes, the likely scenario is that torture subjects will lie to make their torment end. (Shane O'Mara, 2015) According to previous surveys, coerced confessions rarely work, and reports obtained under duress are not only more likely to be false but also likely to aggrieve innocent people. Innocence surveys estimate that about 25 percent of suspects who admit guilt and are convicted are later proven innocent. An infamous example of this phenomenon is the Central Park Jogger case. Despite concrete proof, five teenage males admitted to viciously raping and beating a jogger.

(JUSTIA, 2022) However, another individual confessed to the attack thirteen years later, and DNA analysis supported his account. Based on relevant expert investigations, it is speculated that factors such as the young boys' encounters during interrogation contributed to the formation of false confessions. In such cases, not only the overall interest did not become safer without increasing, but the merit of the five individuals was significantly reduced, not satisfying the main principles of utilitarianism. Moreover, assuming that the bombing suspects provided false information, it is not only the lives of innocent people that are lost but also the time of the staff involved and the happiness of the suspects. The argument of utilitarianism in the previous section does not mean that utilitarians favor coerced confessions; Instead, they usually use utilitarianism to oppose torture because of inaccurate information intelligence.

2.2.2 Violence Level

From a state's perspective, assuming that A state accepts the legality of torturing a captured person or spy to extract a confession, then Its military personnel are likely to be punished more brutally if imprisoned by another (B or C) state. This situation has intensified in the form of severe torture to extract confessions, resulting in mass casualties of captured people and potentially threatening national security if captured personnel are successfully broken by torture and given correct information. As a result, not only has the overall utility of the country been reduced, but national security has also been threatened. From a global perspective, the growing trend in the use of torture will lead to an increase in the overall level of violence in the world, resulting in more negative externalities. (Michael J. Sandel, 2009)

2.2.3 Ethical Ramifications

More importantly, from the liberal human rights viewpoint, people have a fundamental objection to coerced confessions because they believe that doing so violates human rights and disregards the intrinsic worth of every individual. They believe that human rights and human dignity have a moral foundation that transcends utility. The recognition of the equal and inalienable rights of all members of the human family, per the Charter of the United Nations, is the foundation of the world's contentious peace, recognizing that these rights derive from the human dignity of the human person. (1984) However, torture challenges these rights of suspects and does not give them the right to defense and human rights they deserve, and therefore, when examined from a world human rights perspective, torture should not be enforced. When a plan is developed to undermine human

rights, the herd effect causes many laws that violate such rights to spread, resulting in a non-moral world. This demonstrates how interwoven human rights are and emphasizes how challenging it is to reduce the side effects of torture. Furthermore, the moral standing of the governments and institutions that engage in torture is also harmed, in addition to the suffering done to the victims. An institution's use of torture can cause internal strife and jeopardize its integrity.

4. Course of actions

On the one hand, after the 9/11 terrorist attacks, the American government's position on torture changed. To combat terrorism by using torture, the Administration reinterpreted the Geneva Convention's definition and even its applicability. Abu Zubaydah, one of the first high-value detainees in the war on terror and the inspiration behind the Administration's strategy of harsh interrogation techniques, provides a compelling illustration of this. He was supposedly Al Qaeda's head of logistics. Because the U.S. military thought he possessed crucial intelligence regarding Al Qaeda operations, he was subjected to torture up to eight times, including waterboarding. Second, the August 1 memo, which offers an interpretation of the domestic codification of the UN Convention against Torture, was revised by the Bush administration to justify torture. Through this lens, we can comprehend the torture memos' relevance and the Geneva Conventions' abandoning. (Jeffrey P. Fontas, 2010) This is also a good illustration of how certain nations have justifiably used torture.

On the other hand, nonetheless, torture is strictly prohibited under international law at all times, including during times of armed war or a public emergency. But today's society is still filled with people who commit torture and other forms of cruel treatment, often with no consequences. Under international law, reparation, compensation, and rehabilitation rarely go to torture victims or their families. Within a few years after it was founded, the United Nations established one of its core commitments: to eradicate torture from the globe. By assisting the Special Rapporteur on Torture, the Committee Against Torture, and the Subcommittee on Prevention of Torture in their work, UNHCHR contributes to this commitment. The organizing committee additionally contributes to the United Nations Voluntary Fund for Victims of Torture, which aids in the recovery of torture victims and their families.

5. Evaluation of sources

Every citation used in the text was carefully verified

and reviewed before being collected online. The sources are carefully chosen from well-known colleges and organizations, making the information cited official and trustworthy. All reporting material is sourced from reliable news agencies such as the Wall Street Journal, BBC News, and Science. All citation references for papers mainly come from academic journals on ProQuest. The articles cited were published in the decade 2001-2021 to ensure that the content was relevant, that it was contemporary and innovative, and that it included an assessment of essential events in the 21st century. Two citations without a definite author are the document from the United Nations and the case study from the JUSTIA website. These resources are credible even though they have yet to have an identified author since various experts write them. Generally speaking, the author used references from credible publications and reports and double-checked citations in the references to ensure the validity of the article and data research.

6. Conclusion

Taken as a whole, torture to elicit confessions is not a just practice for any nation or circumstance, even though it may benefit victim comfort and national security. The human rights issue and utilitarianism are the essential arguments in favor of the conclusion because life should be regarded as the most important thing in human civilization, and human rights are inherent to life to ensure that it is properly created. Furthermore, the false information highlights torture's ineffectiveness and recommends an alternative approach be used. Thus, in conclusion, on balance, torture to confession is more harmful than beneficial, so it should not be taken by action. The interest of justice demands that alternative methods to extract confessions be explored and that accused persons are treated humanely, without inflicting harm, in compliance with international law and human rights principles.

(Word count: 2244)

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